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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,332

07/21/2004

Renato Ancorotti

3687-70

8959

23117

7590

04/11/2008

NIXON & VANDERHYE, PC

901 NORTH GLEBE ROAD, 11TH FLOOR

ARLINGTON, VA 22203

EXAMINER

AHMED, HASAN SYED

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

04/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/500,332	<b>Applicant(s)</b> ANCOROTTI, RENATO	
	<b>Examiner</b> HASAN S. AHMED	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

- Receipt is acknowledged of applicant's amendment and response, which were filed on 10 January 2008.
- The 35 USC 112 and obviousness-type double patenting rejections are withdrawn in view of the amendment and response.

\* \* \* \* \*

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 18-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Verdon, et. al. (U.S. Patent No. 4,994,264).

Verdon, et. al. disclose a process of making a press molded cosmetic composition (see col. 1, line 67 – col. 2, line 2).

The disclosed process is the instant process as claimed:

- the fatty emulsion (solvent and fats) of instant claims 18(a') and 29(a') (see Example, col. 4, line 65 – col. 5, line 23; Example, col. 4, line 65 – col. 5, line 23);
- the coloring powders of instant claims 18(a'') and 29(a'') (see col. 3, lines 54-58);

- the mixing of instant claims 18(b) and 29(b) (see Example, col. 4, line 65 – col. 5, line 23);
- the extruding of instant claims 18(c) and 29(c) (see Example, col. 4, line 65 – col. 5, line 23);
- the drying of instant claims 18(d) and 29(d) (see col. 4, lines 32-36);
- the stearate of instant claims 19 and 30 (see Example, col. 4, line 65 – col. 5, line 23);
- the water of instant claims 20 and 31 (see col. 2, lines 41-44);
- the preserving agents of instant claims 21 and 32 (see col. 3, lines 63-66);
- the coloring powders comprising synthetic and/or natural pigments of instant claims 22 and 33 (see col. 3, lines 54-58);
- the ratio of phases of instant claims 23 and 34 (see col. 6, line 20);
- the extruder of instant claims 24 and 35 (see col. 4, line 28);
- the drying temperature and humidity of instant claims 26 and 37 (see col. 4, lines 34-36);
- the cosmetic of instant claims 27 and 38 (see Example, col. 4, line 65 – col. 5, line 23);
- the blusher or eye shadow of instant claims 28 and 39 (see col. 1, line 17);  
and
- the sizing of instant claims 40 and 41 (see col. 4, lines 11-13).

Although the Verdon reference does not explicitly recite the oven of instant claims 25 or 36, it recites drying at temperatures of about 40-55 degrees Celsius. It is

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inherent that the molded composition would only be dried at such high temperatures in an oven.

\*

2. Claims 18 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Hempel et al. (U.S. Patent No. 4,332,763).

Hempel, et. al. disclose a process of making a non-pressed powder cosmetic composition (see col. 1, line 57).

The disclosed process is the instant process as claimed:

- the fatty emulsion (fatty substances) of instant claims 18(a') and 29(a') (see col. 2, line 9);
- the coloring powders (dyes) of instant claims 18(a'') and 29(a'') (see col. 2, line 10);
- the mixing (kneading) of instant claims 18(b) and 29(b) (see col. 2, line 55);
- the extruding of instant claims 18(c) and 29(c) (see col. 2, line 60);
- the drying of instant claims 18(d) and 29(d) (see col. 2, lines 61-62); and
- the sizing of instant claims 18(e) and 29(e) (see col. 4, lines 62-66).

\* \* \* \* \*

### ***Response to Arguments***

Applicant's arguments filed on 10 January 2008 have been fully considered but they are not persuasive.

**35 USC 102**

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1. Applicants argue that the term “non-pressed powder” must be given consideration when applying prior art. See remarks, page 7.

Examiner respectfully submits that the prior art reads on the instant application as claimed and disclosed. The instant specification describes a process of extrusion of a paste followed by shaping of the extruded product (see instant application, e.g., page 4, line 25 - page 5, line 4 and page 6, lines 4-5). Verdon describes a similar process (see, e.g., col. 4, lines 28-36). Applicants do not provide any special definition of the term “non-pressed powder.” As such, examiner respectfully submits that the prior art reads on the instant application as claimed and disclosed.

2. Applicants argue that the instant application is distinguished from the prior art by the formation of an emulsion separate from the coloring powders, followed by mixing of the emulsion and the coloring powders. See remarks, page 7.

Examiner respectfully submits that in the Verdon composition, adding of the fatty components to water will inherently form an emulsion which will then mix with the added colors (see Example, col. 4, line 65 – col. 5, line 23). As such, the method of making the Verdon composition is equivalent to that being claimed instantly.

3. Applicants argue that the Hempel reference is distinguished from the instant application because it does not disclose a cosmetic product for make-up such as eye shadows, face powders, and blusher. Additionally, applicants argue that Hempel discloses a low concentration of coloring powders, while the instant application discloses a high concentration of coloring powders. See remarks, page 8.

Examiner respectfully submits that Hempel was applied only to instant claims 18 and 29. It is noted that the features upon which applicant relies (i.e., a cosmetic product for make-up such as eye shadows, face powders, blusher, and coloring powder concentration) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

4. Applicants argue that Hempel does not disclose the preparation of two distinct portions which are combined just before extrusion. See remarks, page 8.

Examiner respectfully submits that Hempel's method involves adding a fatty component to a color, followed by mixing then extrusion (see col. 2, lines 9-10, lines 34-40, and lines 54-62; examples 1-3). As such, the Hempel reference anticipates the instant application, as claimed.

\* \* \* \* \*

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

★

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASAN S. AHMED whose telephone number is (571)272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. S. A./  
Examiner, Art Unit 1618



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/Humera N. Sheikh/  
Primary Examiner, Art Unit 1618